

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BUTTE COUNTY OFFICE OF
EDUCATION, FOUR WINDS CHARTER
SCHOOL, YUBA CITY UNIFIED
SCHOOL DISTRICT, FEATHER FALLS
UNION ELEMENTARY SCHOOL
DISTRICT, AND IPAKANNI EARLY
COLLEGE CHARTER SCHOOL.

OAH Case No. 2016040611

ORDER GRANTING REQUEST FOR
RECONSIDERATION; DEEMING
STUDENT'S AMENDED COMPLAINT
FILED MAY 18, 2016; RE-SETTING
DATES; AND DENYING REQUEST
FOR CONTINUANCE AS MOOT

On April 11, 2016, Student filed with the Office of Administrative Hearings an amended request for due process hearing (complaint) naming Butte County Office of Education, Four Winds Charter School, Yuba City Unified School District, Feather Falls Union Elementary School District, and Ipakanni Early College Charter School. OAH treated this amended complaint as a motion seeking leave to file an amended complaint. On May 18, 2016, the undersigned administrative law judge issued an order granting Student's request to file an amended complaint and deeming the amended complaint filed as of April 18, 2016.¹

On May 20, 2016, Butte County, Four Winds, Feather Falls, and Ipakanni filed an Objection to Order Granting Motion to Amend Complaint requesting that the amended complaint be deemed filed as of the date of the order granting leave to amend. This objection is considered a motion for reconsideration of the May 18, 2016 Order Granting Motion to Amend Complaint. On May 20, 2016, Yuba City filed a non-opposition to the request for reconsideration and also filed a motion to continue the non-expedited prehearing conference and hearing dates. On May 23, 2016, Student filed a partial opposition to the motion for reconsideration, asking that the current dates remain.

¹ Student's amended complaint raised an expedited issue and the matter was set for expedited and non-expedited dates based on the April 18, 2016 filing date. Student's expedited matter was dismissed on May 20, 2016.

APPLICABLE LAW

Reconsideration

The Office of Administrative Hearings will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

Amended Complaint

An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to the due process hearing. (20 U.S.C. §1415(c)(2)(E)(i).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

Request for Continuance

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.) Generally, continuances of matters are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

DISCUSSION

Butte County, Four Winds, Feather Falls, and Ipakanni allege new facts and circumstances in support of their request for reconsideration. In particular, the respondents allege they have suffered prejudice by not receiving notice until May 18, 2016, that the amended complaint would be deemed filed as of April 18, 2016.

The motion for reconsideration is accompanied by a sworn declaration of counsel for Butte County, Four Winds, Feather Falls, and Ipakanni and was timely filed. Additionally, the ALJ sua sponte moves to reconsider her prior order in recognition of the fact that

Student's amended complaint adds both Feather Falls and Ipakanni as respondents for the first time. Accordingly, the request for reconsideration is granted.

Filing Date of Amended Complaint

Student filed his amended complaint on April 11, 2016. Typically OAH allows the named parties three full business days to respond to a motion prior to issuing an order. Although many factors influence the timing of when OAH may issue an order on a pending motion, the soonest OAH would have ruled on Student's motion to amend would have been April 18, 2016. Given the delay in ruling on this pending motion and the expedited nature of some of Student's issues, the undersigned ALJ initially determined that the amended complaint would be deemed filed as of April 18, 2016.

Student opposes the request to reconsider and to re-set dates based on a filing date of May 18, 2016, on the grounds that this will delay resolution and prejudice Student. On reconsideration, in balancing the equities, and in light of the dismissal of Student's expedited matter and the addition of two new respondents, the undersigned grants the request to deem Student's amended complaint filed as of May 18, 2016, the date Student was granted leave to amend.

Request for Continuance

In light of this order re-setting dates based on the filing date of May 18, 2016, Yuba City's request for a continuance is denied as moot.

ORDER

1. The request for reconsideration is granted.
2. Student's amended complaint is deemed filed as of May 18, 2016.
3. OAH will issue a new Scheduling Order based on a filing date of May 18, 2016.
4. Yuba City's request to continue dates is denied as moot.

5. All pending dates are vacated.

IT IS SO ORDERED.

DATE: May 24, 2016

DocuSigned by:

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THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings